

SENATE BILL NO. 436

INTRODUCED BY J. O'NEIL

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THAT A NOTICE SERVED WITH A CHILD ABUSE AND NEGLECT PETITION AND A NOTICE PROVISION IN A TREATMENT PLAN MUST ADVISE A PARENT THAT SUCCESSFUL COMPLETION OF A CHILD PROTECTIVE SERVICES TREATMENT PLAN AND A CHANGE IN BEHAVIOR BY THE PARENT GUARANTEES THE RETURN OF THE CHILD; PROVIDING THAT A COURT MAY NOT ORDER TERMINATION OF THE PARENT-CHILD LEGAL RELATIONSHIP IF A PARENT'S SUCCESSFUL COMPLETION OF A TREATMENT PLAN RESULTS IN A CHANGE IN BEHAVIOR BY THE PARENT, ABSENT CERTAIN CIRCUMSTANCES; AND AMENDING SECTIONS 41-3-422, 41-3-443, AND 41-3-609, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 41-3-422, MCA, is amended to read:

"41-3-422. Abuse and neglect petitions -- burden of proof. (1) (a) Proceedings under this chapter must be initiated by the filing of a petition. A petition may request the following relief:

- (i) immediate protection and emergency protective services, as provided in 41-3-427;
- (ii) temporary investigative authority, as provided in 41-3-433;
- (iii) temporary legal custody, as provided in 41-3-442;
- (iv) long-term custody, as provided in 41-3-445;
- (v) termination of the parent-child legal relationship, as provided in 41-3-607;
- (vi) appointment of a guardian pursuant to 41-3-444;
- (vii) a determination that preservation or reunification services need not be provided; or
- (viii) any combination of the provisions of subsections (1)(a)(i) through (1)(a)(vii) or any other relief that may be required for the best interests of the child.

(b) The petition may be modified for different relief at any time within the discretion of the court.

(c) A petition for temporary legal custody may be the initial petition filed in a case.

(d) A petition for the termination of the parent-child legal relationship may be the initial petition filed in a case if a request for a determination that preservation or reunification services need not be provided is made

1 in the petition.

2 (2) The county attorney, attorney general, or an attorney hired by the county shall file all petitions under
3 this chapter. A petition filed by the county attorney, attorney general, or an attorney hired by the county must be
4 accompanied by:

5 (a) an affidavit by the department alleging that the child appears to have been abused or neglected and
6 stating the basis for the petition; and

7 (b) a separate notice to the court stating any statutory time deadline for a hearing.

8 (3) Abuse and neglect petitions must be given highest preference by the court in setting hearing dates.

9 (4) An abuse and neglect petition is a civil action brought in the name of the state of Montana. The
10 Montana Rules of Civil Procedure and the Montana Rules of Evidence apply except as modified in this chapter.
11 Proceedings under a petition are not a bar to criminal prosecution.

12 (5) (a) Except as provided in subsection (5)(b), the person filing the abuse and neglect petition has the
13 burden of presenting evidence required to justify the relief requested and establishing:

14 (i) probable cause for the issuance of an order for immediate protection and emergency protective
15 services or an order for temporary investigative authority;

16 (ii) a preponderance of the evidence for an order of adjudication or temporary legal custody;

17 (iii) a preponderance of the evidence for an order of long-term custody; or

18 (iv) clear and convincing evidence for an order terminating the parent-child legal relationship.

19 (b) If a proceeding under this chapter involves an Indian child, as defined in the federal Indian Child
20 Welfare Act, 25 U.S.C. 1901, et seq., the standards of proof required for legal relief under the federal Indian
21 Child Welfare Act apply.

22 (6) (a) Except as provided in the federal Indian Child Welfare Act, if applicable, the parents or parent,
23 guardian, or other person or agency having legal custody of the child named in the petition, if residing in the
24 state, must be served personally with a copy of the initial petition and a petition to terminate the parent-child legal
25 relationship at least 5 days before the date set for hearing. If the person or agency cannot be served personally,
26 the person or agency may be served by publication as provided in 41-3-428 and 41-3-429.

27 (b) Copies of all other petitions must be served by certified mail. If service is by certified mail, the
28 department must receive a return receipt signed by the person to whom the notice was mailed for the service
29 to be effective. Service of the notice is considered to be effective if, in the absence of a return receipt, the person
30 to whom the notice was mailed appears at the hearing.

1 (7) If personal service cannot be made upon the parents or parent, guardian, or other person or agency
2 having legal custody, the court shall appoint an attorney to represent the unavailable party when, in the opinion
3 of the court, the interests of justice require.

4 (8) If a parent of the child is a minor, notice must be given to the minor parent's parents or guardian,
5 and if there is no guardian, the court shall appoint one.

6 (9) (a) Any person interested in any cause under this chapter has the right to appear. Any foster parent,
7 preadoptive parent, or relative caring for the child must be given legal notice by the attorney filing the petition
8 of all judicial hearings for the child and must be given an opportunity to be heard. The right to appear or to be
9 heard does not make that person a party to the action. Any foster parent, preadoptive parent, or relative caring
10 for the child must be given notice of all reviews by the reviewing body.

11 (b) A foster parent, preadoptive parent, or relative of the child who is caring for or a relative of the child
12 who has cared for a child who is the subject of the petition who appears at a hearing set pursuant to this section
13 may be allowed by the court to intervene in the action if the court, after a hearing in which evidence is presented
14 on those subjects provided for in 41-3-437(4), determines that the intervention of the person is in the best
15 interests of the child. A person granted intervention pursuant to this subsection is entitled to participate in the
16 adjudicatory hearing held pursuant to 41-3-437 and to notice and participation in subsequent proceedings held
17 pursuant to this chapter involving the custody of the child.

18 (10) An abuse and neglect petition must:

19 (a) state the nature of the alleged abuse or neglect and of the relief requested;

20 (b) state the full name, age, and address of the child and the name and address of the child's parents
21 or guardian or person having legal custody of the child;

22 (c) state the names, addresses, and relationship to the child of all persons who are necessary parties
23 to the action.

24 (11) The court may at any time on its own motion or the motion of any party appoint counsel for any
25 indigent party. If an indigent parent is not already represented by counsel, counsel must be appointed for an
26 indigent parent at the time that a request is made for a determination that preservation or reunification services
27 need not be provided.

28 (12) At any stage of the proceedings considered appropriate by the court, the court may order an
29 alternative dispute resolution proceeding or the parties may voluntarily participate in an alternative dispute
30 resolution proceeding. An alternative dispute resolution proceeding under this chapter may include a family

group decisionmaking meeting, mediation, or a settlement conference. If a court orders an alternative dispute resolution proceeding, a party who does not wish to participate may file a motion objecting to the order. If the department is a party to the original proceeding, a representative of the department who has complete authority to settle the issue or issues in the original proceeding must be present at any alternative dispute resolution proceeding.

(13) Service of a petition under this section must be accompanied by a written notice advising the child's parent, guardian, or other person having physical or legal custody of the child of the:

(a) right to request the appointment of counsel if the person is indigent or if appointment of counsel is required under the federal Indian Child Welfare Act, if applicable;

(b) right to contest the allegations in the petition; and

(c) timelines for hearings and determinations required under this chapter.

(14) If appropriate, orders issued under this chapter must contain a notice provision advising a child's parent, guardian, or other person having physical or legal custody of the child that:

(a) the court is required by federal and state laws to hold a permanency hearing to determine the permanent placement of a child no later than 12 months after a judge determines that the child has been abused or neglected or 12 months after the first 60 days that the child has been removed from the child's home;

(b) if a child has been in foster care for 15 of the last 22 months, state law presumes that termination of parental rights is in the best interests of the child and the state is required to file a petition to terminate parental rights; and

(c) successful completion of a treatment plan does not guarantee with an appropriate change in behavior guarantees the return of a child, but completion of the treatment plan without an appropriate change in behavior does not guarantee the return of the child.

(15) A court may appoint a standing master to conduct hearings and propose decisions and orders to the court for court consideration and action. A standing master may not conduct a proceeding to terminate parental rights. A standing master must be a member of the state bar of Montana and must be knowledgeable in the area of child abuse and neglect laws."

Section 2. Section 41-3-443, MCA, is amended to read:

"41-3-443. Treatment plan -- contents -- changes. (1) The court may order a treatment plan if:

(a) the parent or parents admit the allegations of an abuse and neglect petition;

1 (b) the parent or parents stipulate to the allegations of abuse or neglect pursuant to 41-3-434; or

2 (c) the court has made an adjudication under 41-3-437 that the child is a youth in need of care.

3 (2) Every treatment plan must contain the following information:

4 (a) the identification of the problems or conditions that resulted in the abuse or neglect of a child;

5 (b) the treatment goals and objectives for each condition or requirement established in the plan. If the
6 child has been removed from the home, the treatment plan must include but is not limited to the conditions or
7 requirements that must be established for the safe return of the child to the family.

8 (c) the projected time necessary to complete each of the treatment objectives;

9 (d) the specific treatment objectives that clearly identify the separate roles and responsibilities of all
10 parties addressed in the treatment plan; and

11 (e) the signature of the parent or parents or guardian, unless the plan is ordered by the court.

12 (3) A treatment plan may include but is not limited to any of the following remedies, requirements, or
13 conditions:

14 (a) the right of entry into the child's home for the purpose of assessing compliance with the terms and
15 conditions of a treatment plan;

16 (b) the requirement of either the child or the child's parent or guardian to obtain medical or psychiatric
17 diagnosis and treatment through a physician or psychiatrist licensed in the state of Montana;

18 (c) the requirement of either the child or the child's parent or guardian to obtain psychological treatment
19 or counseling;

20 (d) the requirement of either the child or the child's parent or guardian to obtain and follow through with
21 alcohol or substance abuse evaluation and counseling, if necessary;

22 (e) the requirement that either the child or the child's parent or guardian be restricted from associating
23 with or contacting any individual who may be the subject of a department investigation;

24 (f) the requirement that the child be placed in temporary medical or out-of-home care;

25 (g) the requirement that the parent, guardian, or other person having physical or legal custody furnish
26 services that the court may designate.

27 (4) A treatment plan may not be altered, amended, continued, or terminated without the approval of the
28 parent or parents or guardian pursuant to a stipulation and order or order of the court.

29 (5) A treatment plan must contain a notice provision advising parents:

30 (a) of timelines for hearings and determinations required under this chapter;

(b) that the state is required by federal and state laws to hold a permanency plan hearing to determine the permanent placement of a child no later than 12 months after a judge determines that the child has been abused or neglected or 12 months after the first 60 days that the child has been removed from the child's home;

(c) that if a child has been in foster care for 15 of the last 22 months, state law presumes that termination of parental rights is in the best interests of the child and the state is required to file a petition to terminate parental rights; and

(d) that successful completion of a treatment plan ~~does not guarantee with an appropriate change in behavior that caused the removal of the child guarantees~~ the return of a child, ~~and that but~~ completion of the plan without ~~a~~ an appropriate change in behavior that caused removal in the first instance may result in termination of parental rights."

Section 3. Section 41-3-609, MCA, is amended to read:

"41-3-609. Criteria for termination. (1) ~~The~~ Except as provided in subsection (5), the court may order a termination of the parent-child legal relationship upon a finding established by clear and convincing evidence, except as provided in the federal Indian Child Welfare Act, if applicable, that any of the following circumstances exist:

(a) the parents have relinquished the child pursuant to 42-2-402 and 42-2-412;

(b) the child has been abandoned by the parents;

(c) the parent is convicted of a felony in which sexual intercourse occurred or is a minor adjudicated a delinquent youth because of an act that, if committed by an adult, would be a felony in which sexual intercourse occurred and, as a result of the sexual intercourse, the child is born;

(d) the parent has subjected a child to any of the circumstances listed in 41-3-423(2)(a) through (2)(e);

(e) the putative father meets any of the criteria listed in 41-3-423(3)(a) through (3)(c); or

(f) the child is an adjudicated youth in need of care and both of the following exist:

(i) an appropriate treatment plan that has been approved by the court has not been complied with by the parents or has not been successful; and

(ii) the conduct or condition of the parents rendering them unfit is unlikely to change within a reasonable time.

(2) In determining whether the conduct or condition of the parents is unlikely to change within a reasonable time, the court shall enter a finding that continuation of the parent-child legal relationship will likely

1 result in continued abuse or neglect or that the conduct or the condition of the parents renders the parents unfit,
2 unable, or unwilling to give the child adequate parental care. In making the determinations, the court shall
3 consider but is not limited to the following:

4 (a) emotional illness, mental illness, or mental deficiency of the parent of a duration or nature as to
5 render the parent unlikely to care for the ongoing physical, mental, and emotional needs of the child within a
6 reasonable time;

7 (b) a history of violent behavior by the parent;

8 (c) excessive use of intoxicating liquor or of a narcotic or dangerous drug that affects the parent's ability
9 to care and provide for the child; and

10 (d) present judicially ordered long-term confinement of the parent.

11 (3) In considering any of the factors in subsection (2) in terminating the parent-child relationship, the
12 court shall give primary consideration to the physical, mental, and emotional conditions and needs of the child.

13 (4) A treatment plan is not required under this part upon a finding by the court following hearing if:

14 (a) the parent meets the criteria of subsections (1)(a) through (1)(e);

15 (b) two medical doctors or clinical psychologists submit testimony that the parent cannot assume the
16 role of parent within a reasonable time;

17 (c) the parent is or will be incarcerated for more than 1 year and reunification of the child with the parent
18 is not in the best interests of the child because of the child's circumstances, including placement options, age,
19 and developmental, cognitive, and psychological needs; or

20 (d) the death or serious bodily injury, as defined in 45-2-101, of a child caused by abuse or neglect by
21 the parent has occurred.

22 (5) Notwithstanding other provisions in this section, a parent's successful completion of a treatment
23 plan, with an appropriate change in behavior, must result in the return of the child to the child's parent unless
24 any of the circumstances referred to in subsections (1)(a) through (1)(e) are the result of actions by a parent
25 occurring after the successful completion of the treatment plan."

26
27 **NEW SECTION. Section 4. Saving clause.** [This act] does not affect rights and duties that matured,
28 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

29 - END -